

WESTERN DISTRICT OF WASHINGTON

DERECK GEE,

Plaintiff,

VS.

SPENCER GIFTS LLC d/b/a SPENCER'S, a
New Jersey Corporation; TMD HOLDINGS
LLC, a Pennsylvania Corporation

Defendant

Case No.: 15-cv-05832

PLAINTIFF'S COMPLAINT

PARTIES

1. Derek Gee, plaintiff, is a resident of Oklahoma, and holds a federally registered copyright.

2. Spencer Gifts LLC doing business as Spencer's is a North American retailer with its headquarters in Egg Harbor Township New Jersey.

3. TMD Holdings LLC is a manufacturing and sourcing firm with its headquarters in Pittsburgh Pennsylvania.

PLAINTIFF'S COMPLAINT

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Rodgers Kee & Card, P.S.
ATTORNEYS AT LAW
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JURISDICTION AND VENUE

1. This court has personal jurisdiction over the defendants and venue is proper within the Western District of Washington because Spencer's is a foreign corporation with its principal place of business in New Jersey, and TMD holding company is a foreign corporation with its principal place of business in Pennsylvania, both of whom have engaged in channels of commerce, personally availing themselves to this Court's jurisdiction. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987).

2. This Court has subject matter jurisdiction over plaintiff's claims because they are Federal claims arising from Title 17 of the United States Code (the "Copyright Act"). 28 U.S.C. §§ 1331 and 1338.

3. This Court has supplemental jurisdiction over any State claims pursuant to 28 U.S.C. 1367.

4. Alternatively, this Court has diversity jurisdiction over plaintiff's claims because the parties are diverse and the claims herein exceed \$75,000.

FACTUAL BACKGROUND

5. In early 2011, Plaintiff compiled and created two dimensional artwork representative of the popular novelty game known as Kings Cup.

6. On October 10, 2011 Plaintiff effectively registered his artwork with the United States Copyright Office, in order to protect his representations of a standardize game to be sold as kings cup and alternatively design a second game standardized as "Waterfall".

7. On July 22, 2011 plaintiff created a Facebook page entitled "Waterfall" in order to start promotion of his works as he was finalizing his copyright certificate.

1 8. In April of 2015, plaintiff discovered a nearly identical novelty game being sold at a local
2 Spencer's store, and upon further investigation found they were being sold nationwide since some
3 point in 2013, without authorization from the plaintiff.
4

5 9. Plaintiff contacted Spencer's attorney and sent him his copyright information on April 27th,
6 2015.

7 10. Thereafter, Kevin Mahoney put plaintiff in contact with TMD holdings LLC, who stated
8 they did not need a copyright to sell this product through Spencer's distribution.
9

10 11. According to documents sent by defendant to plaintiff, TMD holding company knowingly
11 and unsuccessfully applied for a trademark for the name Kings Cup in May of 2015, even after being
12 informed this product had been copyrighted since 2011.

13 **DEFENDANT'S UNLAWFUL CONDUCT**

14 12. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation set
15 forth in paragraph 1 through 11 above.
16

17 13. Sometime in 2013, TMD holdings LLC contracted to distribute the Kings Cup product
18 with Spencer's, in spite of having constructive notice of a registered copyright.

19 14. As of October 1st, 2015, Spencer's is still distributing King Cups products in their stores
20 and on their website, despite requests to remove the product.

21 **Count I**

22 **(Copyright Infringement, 17 U.S.C. § 501 et seq.)**

23 15. Plaintiff repeats, re-alleges, and incorporates by reference each and every allegation set
24 forth in paragraphs 1 through 14 above.
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26

1 16. Plaintiff is the sole owner of any copyright related to the product Kings Cup, and two
2 dimensional artwork therein portraying this product, as designated by Certificates of Registration.

3 17. Defendants have copied, reproduced, distributed, adapted, and/or publicly displayed
4 Plaintiff's copyrighted works without consent or authority of Plaintiff, thereby infringing on
5 Plaintiff's copyright.
6

7 18. Defendants' conduct constitutes infringement of plaintiff's copyright and exclusive rights
8 under copyright in violation of 17 U.S.C. §§ 106 and 501 et seq.

9 19. The acts of infringement by defendants have been willful, intentional, and purposeful, in
10 reckless disregard of and with indifference to the rights of plaintiff.
11

12 20. As a direct and proximate result of its unlawful conduct, defendants are liable to plaintiff
13 for copyright infringement. Plaintiff has suffered, and will continue to suffer, substantial losses,
14 including, but not limited to, damage to its business reputation and goodwill. Plaintiff is entitled to
15 recover damages, which include his losses and all profits defendants have made as a result of their
16 wrongful conduct, pursuant to 17 U.S.C. § 504(b).
17

18 21. Alternative to actual damages plus defendants' profits, Plaintiff is entitled to the
19 maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of 150,000 for each
20 instance designated as a transaction in violation of copyright, or other such amounts as may be proper
21 under 17 U.S.C. 504 (c).
22

23 22. Defendants' conduct have caused and, unless enjoined and restrained by this court, will
24 continue to cause irreparable injury to plaintiff for which plaintiff has no adequate remedy at law.
25 Pursuant to 17 U.S.C. § 502, plaintiff is entitled to injunctive relief prohibiting further infringements
26 of plaintiff's copyright.
27

1 23. Plaintiff is entitled to recover attorneys' fees and costs of suit, pursuant to 17 U.S.C. §
2 505.

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4 **Count II**

5 **(Contributory Copyright infringement, 17 U.S.C. § 501 et. Seq.)**

6 24. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in Paragraph 1
7 through 23 as if set forth fully herein.

8 25. To the extent not done directly, each defendant has engaged in the business of knowingly
9 inducing, causing, and/or materially contributing to the unauthorized reproduction, adaptation, public
10 display, and/or distribution of copies of Plaintiff's copyrighted works.

11 26. To the extent not done directly, each defendant's conduct constitutes contributory
12 infringement of plaintiff's copyrights and exclusive rights in violation of the Copyright Act, 17
13 U.S.C. §§ 106 and 501.

14 27. The acts of infringement by each defendant have been willful, intentional, and purposeful,
15 or in reckless disregard of and with indifference to the rights of Plaintiff.

16 28. Plaintiff is entitled to actual damages due to the contributory infringement of his
17 copyrighted works, pursuant to 17 U.S.C. § 504(b).

18 29. Alternatively, plaintiff is entitled to maximum statutory damages, pursuant to 17 U.S.C. §
19 504(c), in the amount of \$150,000 and any such other amounts as may be proper under 17 U.S.C. §
20 504(c).

21 30. Plaintiff is entitled to their attorney's fees and full costs pursuant to 17 U.S.C. § 505.
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1 **Count III**

2 **(Tortious Interference with Prospective Contractual Relations)**

3 31. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in Paragraphs 1
4 through 30 as if fully set forth herein.

5
6 32. By distributing products on defendant's Internet web sites and in their stores, defendants
7 have intentionally interfered with plaintiff's business of distributing novelty games to prospective
8 customers and have intentionally interfered with plaintiffs' business of selling additional games
9 produced in likeness, thereby hindering plaintiff from selling the same product to other prospective
10 buyers and resulting in damage to plaintiff.

11
12 33. Defendants knew or should have known their actions would interfere with plaintiff's
13 existing and prospective contractual relationships with existing and prospective customers.

14 34. Defendants have wrongfully interfered with the contractual relations between plaintiff and
15 their customers and potential customers without justification or legal excuse. Defendant's
16 interference was willful, wanton, and in disregard for a known registered copyright.

17
18 35. By reason of the foregoing, defendant is liable for all pecuniary losses suffered by plaintiff
19 as a result of defendant's interference, and for punitive damages.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff respectfully request judgment as follows:

- 22 1. That the Court enter a judgment against defendants for willfully infringing on plaintiff's rights
23 in the federally registered copyrights referenced herein in violation of 17 U.S.C. § 501.
24
25 2. That the court issue injunctive relief against each defendants, their officers, agents,
26 representatives, servants, employees, attorneys, successors and assigns, and all others in active

1 concert and/or participation with each defendant, be enjoined and restrained from violating plaintiff's
2 copyrights.

3 3. That the Court issue temporary and permanent injunctive relief against each defendant, their
4 officers, agents, representatives, servants, employees, attorneys, successors and assignees, and all
5 other in active concert or participation with defendants, be enjoined and restrained from copying,
6 distributing, adapting, and/or publicly displaying Plaintiff's copyrighted works without the consent or
7 authority of plaintiff.
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9 4. That the Court enter an order of impoundment pursuant to 17 U.S.C. §§ 503 and 509(a)
10 impounding all infringing copies of plaintiff's works.
11

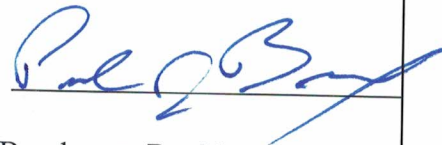
12 5. That the Court enter and order requiring each defendant to provide plaintiff with a full and
13 complete accounting of all profits obtained from their copying, reproduction, distribution, or adoption
14 of Plaintiff's copyrighted works.

15 6. That the Court order each Defendant to pay plaintiff damages and each defendant's profits
16 pursuant to 17 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C. §
17 504(c) and 17 U.S.C. § 504(c)(2), for each defendants' willful infringement of plaintiff's copyright.
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19 7. That the Court order defendants to pay Plaintiff both the costs of this suit and the reasonable
20 attorney's fees incurred by Plaintiff in investigating and prosecuting this action.

21 8. The court grant plaintiff such other and additional relief as is just and proper.
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1 DATED: November 17, 2015
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EXHIBIT 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

AUG 13 REC'D

Registration Number
VAu 1-081-007

Effective date of
registration:

October 10, 2011

Title

Title of Work: waterfall/kings cup playing cards

Completion/Publication

Year of Completion: 2011

Author

■ Author: Dereck Eugene Gee

Author Created: 2-D artwork

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Anonymous: Yes

Copyright claimant

Copyright Claimant: Dereck Eugene Gee

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Rights and Permissions

Name: Dereck Eugene Gee

Email: dereckgee@yahoo.com

Telephone: 918-549-5508

Address: 604 davidson ct

Sand Springs, OK 74063 United States

Certification

Name: Dereck Eugene Gee

Date: October 10, 2011